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From: Callaway, Rex CIV NAVFAC SW
Sent: Monday, February 01, 2010 7:39
To: Gilkey, Douglas E CIV OASN (I&E) BRAC PMO West; Macchiarella, Thomas L CIV OASN (I&E) BRAC PMO West; Forman, Keith S CIV OASN (I&E) BRAC PMO West; Kito, Melanie R CIV NAVFAC SW; Larson, Elizabeth A CIV OASN (I&E) BRAC PMO West; Cummins, John M CIV NAVFAC SW; Liotta, Rita M CIV WEST Counsel
Subject: FW: HPNS ETCA
Attachments: DeltaView Comparison(8).rtf; HPNS ETCA Navy 11 23 09.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Doug, etc.

I am forwarding the SFRA's latest draft of the Parcels B and G ETCA that I received on Friday. We will no doubt be discussing it at our 17 and 18 Feb 10 meeting with SFRA on the ETCA. I suggest that we set up an internal meeting to go over their language after we have had a chance to read and "digest" it so that we are prepared for the 17 and 18 Feb meeting. I realize that you are all very busy and will find it a challenge to make time for this. However, factoring in RDOs and given that Monday 15 Feb is a federal Holiday, we don't have much time to develop Navy responses to the issues before the meeting. It would be ideal if we could have a discussion this Thurs. If that doesn't work, then we should schedule a meeting early next week if possible. I will look to Doug and Thomas to set the meeting up.

-Rex

-----Original Message-----

From: Steinberg, Barry P. [mailto:Barry.Steinberg@KutakRock.com]
Sent: Friday, January 29, 2010 13:25
To: Callaway, Rex CIV NAVFAC SW; Forman, Keith S CIV OASN (I&E) BRAC PMO West; 'Elaine Warren'; Celena Chen; Joshua A. Bloom; 'Hart, Gordon E.'; Hailstocke-Johnson, Ericka M.; Schlossberg, George R.; Carr.Robert@epamail.epa.gov; relliott@dtsc.ca.gov; Cummins, John M CIV NAVFAC SW; Ross Steenson
Subject: HPNS ETCA

All,

In preparation for our meeting in Sacramento in Mid February, we have prepared a new version of the ETCA, adopting language and concepts that were discussed at our mid December meeting and about which there was agreement or an identified need for target language that we could discuss at the upcoming meeting. Nothing was etched in stone and changes are inevitable. This is a draft of a work in progress and it should be recognized that SFRA and the development team continue to refine and address issues in this draft. It should not be regarded as a final position on our part and I expect that there will be changes, additions and deletions over the next few weeks as we approach the meeting date.

The Delta View document attached reflects our changes to the Navy's 23 November 2009 draft. The clean version accepts our changes to the Navy's 23 November 2009 draft.

If, in its review of this draft, the any of you wishes to propose changes, additions, deletions or otherwise comment, please forward along with any discussion points that you want us to consider before the meeting. Although we have avoided a line by line analysis of the ETCA at our last meeting, we appear to be at the point where such an approach may be appropriate. Your suggestions, including discussion items, in that regard are welcome.

It should also be recognized that this draft has been prepared without a commitment from an environmental insurer. Consequences of the terms and conditions of environmental insurance will need to be integrated into the ETCA when that information becomes available.

If you see that I omitted someone from this e mail who should receive the documents, please forward to them.

Thanks,

Barry

#####

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EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

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Appendix 13	<i>Agreement to Implement the Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically-impacted Area around Building 140 dated _____.</i> <u><i>Delete App 13. Escrow instructions to insure that Agency has obligation to accept title when conditions for transfer are met. These conditions include FOST acceptable to DTSC, EPA, RWQB, CDPH license waiver. Draft of escrow instructions to be provided. FFA provisions with respect to IR 7/18 need to be drafted. Will IR 7/18 be excluded from the AOC terms? If so, what if any requirements will be imposed by EPA with respect to this parcel?</i></u>

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SAN FRANCISCO, CALIFORNIA**

THIS EARLY TRANSFER COOPERATIVE AGREEMENT ("Agreement") is made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of Defense and also a local public authority legally empowered to enter into this Agreement. Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party" and collectively as the "Parties."

GENERAL PROVISIONS

The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities. The Navy is authorized to dispose of real and personal property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The SFRA is a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with the authorities set out above.

The Parties did execute and enter into that certain *Conveyance Agreement Between the United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated March 31, 2004 ("Conveyance Agreement").

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

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1 completion of all remedial action necessary to protect human health and the environment. Under
2 this early transfer authority, the Navy intends to convey title to, among other property, the portion
3 of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"),
4 to the SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The
5 SFRA assumes responsibility for certain environmental response activities (hereinafter
6 the "Environmental Services," as defined in Section 211 below) for the consideration set forth
7 in this Agreement. The principal purpose of this Agreement is to facilitate early transfer and
8 redevelopment by providing the contractual vehicle under which the SFRA will perform the
9 Environmental Services in the ACES and be compensated for such performance.

10
11 It is in the public interest and will be beneficial to the Navy and the SFRA for the SFRA to
12 cause to be performed the Environmental Services at the ACES. As set forth in the
13 Amended Federal Facilities Agreement ("Amended FFA"), as defined in Section 231 below,
14 the Navy will resume CERCLA responsibility for compliance with the Amended FFA in the event
15 of a Finding of Default as provided in the Administrative Order on Consent ("AOC") as
16 hereinafter defined, or upon a failure of the Navy to continue its funding obligations, as
17 described in Article IV, or upon a termination of this Agreement pursuant to Sections 701
18 and 1003 below. Notwithstanding any other provisions of this Agreement, the Navy is not a
19 party to, bound by, or responsible for compliance with any of the provisions of the AOC. The
20 Navy's obligations pursuant to the Amended FFA are not affected by this Agreement with
21 respect to Navy Retained Conditions, as defined in Section 206.

22
23 This Agreement benefits the Navy and the SFRA because it facilitates early transfer and
24 immediate reuse by allowing the SFRA to cause to be performed certain environmental
25 remediation activities and simultaneously facilitates redevelopment as defined herein. This
26 Agreement, executed as part of an early transfer, facilitates SFRA access and control to the
27 ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section
28 220 below). In addition, early transfer will allow the Navy to convey title in compliance with
29 CERCLA requirements at an earlier date than could otherwise be achieved. This Agreement is a
30 Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section
31 2701(d)(1).

32
33 In accordance with 42 U.S.C. 9620 (h)(3)(C)(iii), after all remedial action necessary to
34 protect human health and the environment with respect to any hazardous substances remaining on
35 the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate
36 document containing the CERCLA warranty that all ~~necessary~~-response action necessary to
37 protect human health and the environment has been taken .

38
39 The Navy and the SFRA have entered into this Agreement for the purpose of
40 establishing the terms and conditions necessary to obtain Regulatory Closure for the ACES and
41 ensure the execution of Long-Term Obligations associated with Regulatory Closure. The Navy
42 agrees to provide funds to the SFRA in accordance with and subject to the provisions of this
43 Agreement and to undertake and complete its obligations under Section 302 hereof. The SFRA

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agrees to perform the Environmental Services in accordance with and subject to the provisions of this Agreement.

Article I SCOPE AND PURPOSE

Section 101. Performance of Environmental Services

The SFRA shall cause to be performed the Environmental Services in accordance with and subject to the provisions of this Agreement subject to the receipt of funding from the Navy in the amount of _____. The Environmental Services, to the extent required to be performed under this Agreement, with regard to the ACES, shall achieve Regulatory Closure and comply with Long Term Obligations for Known Conditions and Insured Unknown Conditions throughout the ACES as provided herein ~~(except as provided in Section 717 for IR Sites 7/18 and radiologically impacted area around Building 140 intake channel [describe relevant portion]) and~~ shall satisfy the requirements of ~~(i)~~ CERCLA including but not limited to as provided for in the CERCLA Record of Decisions ("ROD") (as defined in Section 207) (including Explanation(s) of Significant Differences and ROD amendments), the National Contingency Plan ("NCP"), and the AOC (as hereinafter defined), ~~and (ii) applicable State and Federal laws and regulations governing releases of petroleum as provided in the Petroleum Corrective Action Plans ("PCAP") as defined in Section 232) or PCAP amendment~~ but excluding those RODs, ESDs and amendments which, pursuant to section 206, are determined to be Navy Retained obligations. The SFRA shall not be responsible for any Navy-Retained Conditions subject to the provisions of this Agreement. [Note: this assumes that all PCAP work will be completed prior to transfer]

Section 102. Performance Method

The CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), ~~PCAPs~~ and AOC together establish the process for the SFRA obtaining Regulatory Closure within the ACES. By the execution of this Agreement, the Navy concurs with the Regulatory Closure process set forth in this Agreement and the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), ~~PCAP~~, and all documents and approvals referenced therein with respect to performance of Environmental Services.

Article II DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

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The Navy's representative for execution purposes is Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. SFRA

The term "SFRA" means the San Francisco Redevelopment Agency, a Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent ("AOC").

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, [Lennar entity] and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The following "Navy-Retained Conditions" are not within the scope of the Environmental Services covered by this Agreement and the SFRA is not responsible for conducting, investigating or remediating them under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; (iii) ~~the performance of all activities necessary to achieve Regulatory Closure at IR Sites 7/18 and radiologically impacted area around Building 140 intake channel [describe relevant portion] (see Section 717),~~ (iv) any other activity identified as the responsibility of the Navy in the Amended FFA, and (v) any change to requirements associated with Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials in the CERCLA RODs ~~and PCAP~~ set forth in an Explanation of Significant Differences under CERCLA or a ROD amendment ~~or a PCAP amendment;~~ (v) unknown uninsured conditions. Navy-Retained Conditions do not include Ineligible Work as defined in Section 218 below. Environmental Services do not include costs or work required by Regulatory Agencies due to any change to a CERCLA ROD or set forth in an Explanation of Significant Differences under CERCLA or a ROD

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Amendment except:

a. to the extent covered by insurance, or

b. not attributable to the negligence or misconduct of SFRA

In the event of such change, the Parties agree to meet, determine whether the costs or work are Navy Retained pursuant to the criteria above and if they are, to identify the Navy's funding source and schedule and to consider the addition of and payment for such work to the ETCA or to arrange for some other contractual relationship.

In the performance of Navy Retained conditions, the Navy agrees to minimize the interference with SFRA's performance of Environmental Services and development work to the extent practicable and consistent with the protection of human health and the environment.

Section 207. CERCLA RODs

The term "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, ~~2009~~, 2009, [EPA and Navy are to resolve "who is United States."] amendments thereto, and explanation of significant differences thereto.

Section 208. Regulatory Closure

The Term "Regulatory Closure" means approval or certification of completion of any necessary remedial or corrective action required to address Known Conditions and Insured Unknown Conditions throughout the ACES including but not limited to that required by the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), ~~the PCAPs~~ and the AOC, or the issuance of a "No Further Action" letter or equivalent finding by the appropriate Environmental Regulatory Agency or Agencies pursuant to the statutes and regulations administered by those Agencies with respect to the ACES and undertaken by the SFRA pursuant to this Agreement. The term "Regulatory Closure" shall include without limitation Certifications of Completion issued by EPA as set forth in Article XVII of the AOC.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required in support of and after Regulatory Closure to address any necessary remedial or corrective action required to address Known Conditions and Insured Unknown Conditions throughout the ACES including but not limited to that associated with or in furtherance of the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), ~~PCAPs~~ and AOC, including providing existing records and reports for the Navy's preparation of the CERCLA five

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year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. ~~The SFRA shall also be responsible for the performance of Long Term Obligations for IR Sites 7/18 and the radiation impacted area around Building 140 intake channel.~~

Section 211. Environmental Services

The term "Environmental Services" means activities funded by this agreement solely with respect and limited to ~~Known Conditions and Unknown~~ the Insured Scope of Work and Insured Conditions necessary to obtain Regulatory Closure throughout the ACES, and ~~perform~~ associated Long-Term Obligations upon which such Regulatory Closure is conditioned except to the extent that such Longterm Obligations are attributable to Navy Retained Obligations. Environmental Services does not include the performance of Navy-Retained Conditions as defined in Section 206 or Ineligible Work as defined in Section 218 below .

Section 212. ~~Known Conditions~~ Insured Scope of Work

~~The term "Known Conditions" means those environmental conditions in the ACES expressly set forth in Appendix 3 to this Agreement and also includes those environmental conditions that the Parties reasonably expect to occur, given the specific sources of the Known Conditions, customary uses on the ACES associated with Navy operations and resulting environmental conditions. By way of example and not limitation, whether an environmental condition may be reasonably expected or not is illustrated as follows: Environmental conditions that are reasonably expected include (i) the concentration of a contaminant identified in Appendix 3 is greater than that expected, (ii) a contaminant at a site is, based upon the state of scientific knowledge at the time that this Agreement is executed, a scientifically accepted "break-down" constituent of, or associated with, a contaminant identified in Appendix 3 as being present at that respective site, or (iii) the physical extent of a contaminant identified in Appendix 3 is greater than that expected. [Final language to be developed together with Appendix 3]~~

The term "Insured Scope of Work" means work necessary to address environmental conditions that is within the coverage grant of the cost overrun insurance component of the Environmental Insurance Policies, and includes such work even after the expiration of the term of, or exhaustion of the limits of, the cost overrun insurance component of the Environmental Insurance Policies, except to the extent such Work is a Navy-Retained Condition.

Section 213. Insured ~~Unknown~~ Conditions

The term "Insured ~~Unknown~~ Conditions" means those environmental conditions in the ACES that are not ~~Known Conditions and are~~ within the insured scope of work but are otherwise within the coverage grant of the Environmental Insurance Policies. This term also includes ~~a specific Unknown Condition~~ any environmental condition that otherwise would have been an Insured ~~Unknown~~ Condition but for which coverage was denied by the insurance provider solely due to the failure of the SFRA or named insured to comply with any ~~Environmental Insurance~~ requirements as set forth in the Environmental Insurance Policies ("Excluded Insured

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~~Unknown~~ Condition”). The term “Insured ~~Unknown~~ Conditions” shall include Excluded ~~Unknown~~ Insured Conditions only to the extent of specific costs that would have otherwise been funded by the Environmental Insurance Policies but for such failure of the SFRA or the named insured.

Section 214. ~~Reserved.~~ Uninsured Condition(s).

The term “Uninsured Condition(s)” means those environmental conditions that are not “Insured Conditions”.

Section 215. Radiological Materials [Need to discuss further]

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, tungsten welding electrodes and household smoke detector components- except to the extent that such products were used for military repair or maintenance activities or are located within the ACEs as a result of Operation Crossroads. [Need to discuss procedures in event Radiological Materials are encountered unexpectedly.]

Section 216. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the environmental insurance policy(ies) issued and approved pursuant to Section XXXXX and meeting the requirements of Section XXXXX below and attached as Appendix 4.

Section 217. Reserved

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering LBP from structures.

b. Cleanup of pesticides and herbicides applied in accordance with the

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requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils. [\[note EPA comment on draft FOSL: consumer product exemption does not apply. Further, 40 CFR 302.4 specifically lists chlordane and other termiticides as a CERCLA hazardous substance, pursuant to 42 USC 9602. What is the basis for excluding remedial work for a specifically designated hazardous substance? Further, if soils containing pesticides were moved by the Navy from the location where the pesticides were applied, what is the basis for rendering the cost for cleanup of such soil ineligible? What is basis upon which proper application is to be determined?\]](#)

c. Management and off-site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any portion of the ACES for which all appropriate Environmental Regulatory Agencies have previously approved Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA, or (2) issuance of an approved Remedial Action Completion Report ("RACR") following installation of a cap/cover remedial action by the Navy.

d. Additional remediation necessary to implement a change in land use from the land uses set forth in the Reuse Plan.

e. Management and disposal of construction and demolition debris generated in the course of Redevelopment Activity.

f. Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except the following shall not be Ineligible Costs removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment vessels within or beneath structures to the extent the equipment and vessels were not reasonably discovered by visual inspection during a walk-through in which both parties participated.

g. Any reconstruction, alteration, or replacement of any initial cap/cover containment remedial action constructed pursuant to a ROD (including but not limited to reconstructed, altered, or replaced cap/covers incorporating soil vapor barriers for enclosed structures), [but only to the extent that such reconstruction, alteration or replacement is the result of \(i\) SFRA's failure to implement and/or enforce required institutional controls, or \(ii\) Redevelopment Activity.](#)

h. Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

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i. Any other work or activity that is not related to: (1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing associated "Long-term Obligations."

j. Regulatory Enforcement Activities unrelated to regulatory oversight.

k. Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.

1. Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

SFRA shall ~~be responsible for addressing~~ have no obligation to address activities defined as Ineligible Work ~~at its own cost and expense, except to the extent work is funded by the Navy or the Environmental Insurance Policies.~~

m. Except to the extent any portion of Ineligible Work is a Navy-Retained Condition, the Navy shall have no responsibility for Ineligible Work, and no funds provided under Section 302(a) may be used by the SFRA to fund Ineligible Work; provided, however, that nothing in this Agreement shall prohibit the SFRA, within its sole discretion, from performing Ineligible Work at the SFRA's own cost and expense. NOTE TO NAVY: This should be moved out of definitions to an operative section.

Section 219. Redevelopment Activity

The term Redevelopment Activity means activities undertaken ~~after the Effective Date of this Agreement in furtherance of the development of the property, including, but not limited to, construction of roads, utilities, and structures and demolition and/or removal of "hardscape" such as roads, sidewalks, and building foundations~~ which are not pursuant to a CERCLA ROD remedy.

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

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Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2. , and specifically excludes IR Sites 7/18 and the radiologically-impacted area ~~around Building 140 intake channel although the SFRA shall be responsible for the performance of Long Term Obligations for IR Sites 7/18 and the radiologically-impacted area around Building 140 intake channel as provided in Section 717.~~

Section 223. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Navy Obligations

The term "Navy Obligations" means the obligations of the Navy as set forth in Section 302 hereof.

Section 226. Regulatory Oversight [\[EPA and Navy were to address and discuss\]](#)

a. The term "Regulatory Oversight" includes the following services provided by ~~the United States~~any Environmental ~~Protection Agency ("USEPA"), the California~~

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~~Department of Toxic Substances Control ("DTSC"), the San Francisco Bay Water Quality Control Board ("Water Board"), and the California Department of Public Health ("CDPH")~~, Regulatory Agency which are considered allowable costs under this Agreement. Technical review of documents or data;

b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);

c. Site visits other than enforcement inspections;

d. Technical Review Committee (TRC) or appropriate community outreach program if applicable;

e. Administration of the Cooperative Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;

f. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;

g. Independent quality assurance/quality control samples.

Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" includes:

a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or

b. Activities associated with USEPA, DTSC, the Water Board, CDPH, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

Section 228. Grants Officer

The Navy's Grants Officer is the Director of Acquisition, NAVFACENGCOM, and is

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the only authorized Government official who can make changes and obligate funds under this Agreement.

Section 229. Environmental Regulatory Agency or Agencies

The term ~~"Environmental Regulatory Agency or Agencies" means the USEPA, DTSC, the Water Board, and CDPH~~ means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), the San Francisco Bay Water Quality Control Board ("Water Board"), and the California Department of Public Health ("CDPH"), or other independent state or federal agency with jurisdiction over the Environmental Services.

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES. These environmental covenants and restrictions are necessary for the protection of human health and the environment and the implementation of final remedies for the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and the Water Board dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 232. Petroleum Corrective Action Plans *[Delete this section if all PCAP work is completed prior to transfer]*

The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs.

A r t i c l e I I I OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

a. In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and

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Budget ("OMB") Circulars, the SFRA assumes responsibility for performing the Environmental Services. Subject to the provisions of Sections 302 hereof, the SFRA agrees that it shall cause to be performed the necessary Environmental Services ~~even if~~unless the costs associated therewith exceed the funds provided by the Navy and the environmental insurance policies hereunder. In the event that an Environmental Regulatory Agency requires changes to the Environmental Services necessary to satisfy the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), ~~PCAPs~~, and AOC, the SFRA shall conduct and bear the cost of such services ~~- except to the extent that the costs and work associated with such change are Navy Retained Conditions as defined in section 206.~~ If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout the ACES ~~no later than (xxx) regardless of whether or not the SFRA retains title.~~ before transferring its final property interest within the ACES to a third party or _____ years after the execution of this Agreement by both parties, whichever shall occur first

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.B hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

c. The SFRA shall conduct audits and shall provide performance and financial reports to the Navy in accordance with Section 301.e. below.

d. The SFRA shall cause the performance of the Environmental Services in a manner that will not unreasonably delay any action that the Navy determines that it may undertake in order to address Navy-Retained Conditions.

e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711.0 hereof.

f. Non-Federal Audits, Performance Reporting & Financial Reports.

(1) The SFRA is responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards

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1 covering financial audits. The costs of audits made in accordance with this section are
2 allowable costs under this Agreement.

3
4 (2) The SFRA is responsible for assuring compliance with applicable
5 Federal requirements and that performance goals are being achieved. In accordance with 32
6 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be
7 submitted to the Navy on the same basis as the SFRA, its developer, or its contractors submit such
8 information to the insurance provider.

9
10 (3) In accordance with 32 CFR 33.41, the SFRA shall submit timely
11 financial status reports to the Navy. All reports shall be submitted to the Navy on the same basis as
12 the SFRA, its developer, or its contractors submit such information to the insurance provider.

13
14 f. The SFRA shall provide the Navy notice within thirty (30) calendar days of
15 receiving notice by Environmental Regulatory Agencies, or other third parties, of the existence of
16 any condition at the ACES that suggests that an action is necessary for which the SFRA is not
17 responsible under this Agreement. If the SFRA is served with a complaint or written notice by an
18 Environmental Regulatory Agency, the SFRA shall provide the Navy with a copy of such
19 document no later than seven (7) calendar days following the service of such document.

20
21 g. Within thirty (30) calendar days of receiving actual notice of any condition at or
22 affecting the ACES or that the SFRA discovers, for which the SFRA is not responsible under
23 Section 302 hereof, the SFRA shall notify the Navy of such condition. The exception to this
24 duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare
25 agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such
26 discovery. The Parties shall, within ~~a reasonable time~~thirty (30) calendar days after such
27 notification, and five (5) calendar days in the case of notification of UKO biological warfare
28 agents, or radiological or chemical warfare agents meet and confer regarding any appropriate
29 coordination that might be required in order to address the circumstances.

30
31 h. Notwithstanding the provisions of the preceding Section 301.e. hereof, but
32 subject to the Navy's funding limitation as set forth in Section 401 hereof, the SFRA shall have the
33 right, but not the duty, to take or cause to be taken the following actions within the ACES with
34 respect to Navy-Retained Conditions:

35
36 (1) Investigation Activities. Any activity necessary to determine the
37 existence, nature, character and extent of conditions that may constitute Navy-Retained
38 Conditions.

39
40 (2) The SFRA shall notify the Navy within fifteen (15) business days after
41 the SFRA takes or causes to be taken any action under Section 301.h(1) hereof. If the Navy
42 disputes an SFRA action taken under Section 301.h(1), the Navy may initiate dispute resolution
43 procedures under Section 1001 hereof.

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i. If the SFRA discovers a condition in the ACES that the SFRA reasonably believes is a Navy-Retained Condition, the SFRA shall make an initial determination whether such condition is in fact a Navy-Retained Condition before incurring such costs or obligations. If, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a Navy-Retained Condition, the SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401, hereof, and the dispute resolution provisions of Section 1001 hereof. Nothing in this Agreement shall be construed as a Navy promise or obligation to provide such reimbursement, provided however that, subject to its funding limitations and the Anti-Deficiency Act, the Navy shall use its best efforts to obtain funds to reimburse SFRA for its reasonable costs incurred under this Section 301 (g).

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any Navy-Retained Conditions that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections to ensure compliance with the Long Term Obligations by future transferees of the ACES and prepare compliance monitoring reports and certificates as required ~~to address Known Conditions within the ACES including but not limited to those addressed by~~ under the LUC RD and CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments) and the AOC. The SFRA shall notify and obtain approval from the Navy, ~~at the Navy's discretion~~ which approval shall not be unreasonably withheld, of any change in land use that is inconsistent with the use restrictions and assumptions contained in the CRUP or described in the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments) ~~-, which approval shall be based upon a determination that such change in use does not represent significant increase in risk to human health and the environment.~~ After receiving approval ~~from the Navy, the SFRA shall notify and obtain approval,~~ for such use from the other signatories to the Amended FFA, ~~and, in the case of IR Sites 7/18, CDPH~~ the SFRA shall notify and obtain approval from the Navy.

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

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b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

c. Within ~~a reasonable time~~ thirty (30) calendar days after the SFRA has provided the Navy with:

(1) proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and

(2) a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. Within a ~~reasonable period of time~~ fifteen (15) after receiving any notice from the SFRA under Section 301.f. or 301.g. hereof, the Navy shall confer with the SFRA with regard to any Navy-Retained Condition at issue giving priority to notices concerning the presence of UXO, biological warfare agents, chemical warfare agents or Radiological Materials. The Navy and the SFRA, in consultation with the appropriate Environmental Regulatory Agency or Agencies, shall (i) endeavor to agree upon a course of action. If the Parties cannot agree whether an environmental condition constitutes a Navy-Retained Condition, or disagree about the action required in response to any such condition under CERCLA, the matter may be submitted to dispute resolution under Section 1001. Consistent with the provisions of above Section 301.h., including being subject to the Maximum Navy Funding Obligation as set forth in Section 401 hereof and the Dispute Resolution Provisions under Section 1001, the SFRA may take any actions deemed necessary, and seek reimbursement from the Navy for the costs associated with such actions.

e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

f. ~~[TRANSITION PLAN OBLIGATIONS?]~~ The Navy shall cause its performance of any activity with respect to Navy Retained Conditions in a manner that will not delay the SFRA's performance of Environmental Services or development of the Aces.

Article IV FUNDING LIMITATION AND BUDGETING

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Section 401. Navy's Funding Limitation

The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation, provided that the Navy use its best effort to obtain funds to reimburse SFRA pursuant to Section 301 (i).

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

INSERT THE UIC AND LINE OF ACCOUNTING HERE

A r t i c l e V PAYMENT SCHEDULE

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

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1 (1) The SFRA shall maintain or demonstrate the willingness and ability to
2 maintain procedures to minimize the time elapsing between the transfer of the funds from the
3 escrow account to the SFRA and their disbursement by the SFRA to an independent third party
4 payee.
5

6 (2) Within a reasonable period of time after receiving the advance payment from
7 the escrow account, the SFRA shall deposit the funds with an independent third party payee such
8 as an insurer. Such independent third party payee shall be responsible for making all
9 payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA
10 enters into an agreement to perform the Environmental Services or to supervise the performance of
11 the Environmental Services. Funds shall be considered disbursed by the SFRA when the following
12 has occurred:
13

14 (A). The SFRA does not retain possession of the funds;
15

16 (B). The SFRA cannot get the funds back upon demand (this does not
17 include allowable costs incurred by the SFRA for which the SFRA requests proper
18 reimbursement from the independent third party payee);
19

20 (C). The independent third party payee is an independent stakeholder
21 from the SFRA and the party or parties with whom the SFRA enters into an agreement to perform
22 the Environmental Services or supervise the performance of the Environmental Services and not
23 the agent of the SFRA;
24

25 (D). The SFRA receives something in exchange for the transfer of
26 funds to the independent third party payee, such as a contractual promise to hold the funds and
27 make payments in accordance with specified procedures.
28

29 (3) Any agreement by the SFRA with an independent third party payee must also
30 include the above provisions and satisfy the requirements of 32 CFR §33.21(c).
31

32 (4) Interest. Any interest earned on the advance payment while in the
33 escrow account pending transfer to the SFRA and any interest earned on the advance
34 payment by the SFRA prior to the disbursement of those funds by the SFRA to the
35 independent third party payee must be returned to the Navy in accordance with 32 CFR
36 §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the SFRA
37 to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are considered
38 funds to be utilized for the purposes of this Agreement.
39
40

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Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. Only the following two terms of this Agreement shall survive such termination, and then only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above or other Navy default:

a. SFRA requirements to maintain compliance with Regulatory Closure and any applicable Long-Term Obligations including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;

b. the SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and; (iii) Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

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Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

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Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (1)(a) shall in no event apply to Navy-Retained Conditions or Uninsured Unknown Conditions:

(A) any claims incurred in responding to ~~Known Conditions~~environmental conditions in the ACES, ~~but only to the extent that such response cost claims result from and are associated with Known Conditions; or~~ and within the scope of Environmental Services; or address otherwise any "Ineligible Work" as set forth in Section 218 performed by or on behalf of the SFRA;

(B) oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

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(D) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its contractors or its successors in interest;

(E) all costs arising from the negligent performance of the Environmental Services which SFRA performs or causes to be performed;

(F) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;

(G) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the SFRA, but only to the extent such costs are directly attributable to the poor workmanship or negligence of the SFRA or its contractors in the performance of said implementation;

(H) all costs arising from the correction of any failure of any remedy both selected and implemented by the SFRA; and

(I) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

(2) With regard to the ACES, the Parties agree that the SFRA has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).

(3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect to Navy-Retained Conditions, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect to Navy-Retained Conditions. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the SFRA.

(4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the SFRA.

(5) The SFRA and the Navy agree that the Environmental Services to be caused to be performed by the SFRA in accordance with the terms of this Agreement does not include any work relating to, nor is the SFRA responsible for indemnification of the Navy for any work

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

related to, Navy-Retained Conditions.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past *[are there any past issues known at this time?]*, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action, ~~property damage, or personal injury~~ associated with or as a result of Known Conditions; Insured Unknown Conditions; ~~or activities, actions, contaminants and wastes set forth above in the list of "Ineligible Work;" and~~

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to Navy-Retained Conditions; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD, whether or not such activity is addressed in subsequent CERCLA RODs or CAPs, a CERCLA ROD Amendment, an Explanation of Significant Differences ("ESD"), or through a review and approval process by the United States of America and/or State of California pursuant to a Risk Management Plan or CERCLA IC review and approval procedure. *In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to tise Agreement for which it has already been paid.*

(D) Any personal injury or property damage to the extent that it did not accrue prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA agrees to bind subsequent to the execution of this Agreement, and with an effective date of conveyance, Environmental Insurance Policies with reasonably acceptable terms, conditions and coverages to the Navy which shall include both a Cleanup Cost Cap Policy ("Cost Cap Policy") for cost overruns associated with the performance of the Environmental Services and a Pollution Legal Liability Insurance Policy ("PLL Policy"), or similar coverage or coverages, and issued by an insurance carrier that is rated A.M. Best's or better, substantially similar to the Environmental Insurance Policies shown in Appendix 4. Such Policy

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or Policies will provide that the insurer waive its right of subrogation against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party any rights of action that the SFRA may have against the Navy under this Agreement, subject to the provisions of Section 711.above. The Navy shall be listed as an Additional Insured with respect to the coverage provided in any Environmental Insurance Policy or Policies. The Navy shall not otherwise be deemed an insured of, nor have any rights with respect to, any other grant of coverage under the Environmental Insurance Policies. [Availability of such Policy or Policies?]

c. **RESERVED for additional specific environmental insurance language to be developed.**

d. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

e. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

f. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

Section 715. Representations

a. The Navy represents that:

- (1) it is fully authorized to enter into this Agreement;
- (2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and
- (3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

- (1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,
- (2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,
- (3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to Navy-Retained Conditions, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

~~Section 717. Conveyance of IR Sites 7/18~~

~~The conveyance of IR Sites 7/18 and the radiologically impacted area around Building 140 will be addressed separately in accordance with that certain Agreement to Implement the Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically impacted Area around Building 140 dated _____, and set forth in Appendix 14.~~

~~The SFRA shall not be responsible for obtaining Regulatory Closure for IR Sites 7/18 and the radiologically impacted area around Building 140 intake channel but shall be responsible for performance of Long Term Obligations for IR Sites 7/18 and the radiologically impacted area around Building 140 intake channel pursuant to this Agreement.~~

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

Article IX PROCUREMENT

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990, as amended (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

c. Applicability - Any preference given under subsection (a) shall apply only to contracts entered into after the base closure law was enacted.

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Article X TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either party's enforcement rights, ~~the Navy's enforcement rights for material breach by the SFRA,~~ in

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

accordance with the terms of 32 CFR Section 33.43, Enforcement, shall include:

~~a. — Temporarily withholding cash payments pending correction of the deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;~~

~~a. — b. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;~~

~~b. — c. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.~~

~~c. — d. Withholding further awards under this Agreement; and~~

~~d. — e. Taking other remedies that may be legally available.~~

~~Section 1003. Termination~~

~~a. — This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.~~

~~b. — Reserved.~~

~~c. — Reserved.~~

~~d. — If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.~~

~~e. — If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:~~

~~(1) — Stop work;~~

~~(2) — Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities;~~

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(3) ~~Terminate all subcontracts;~~

(4) ~~With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;~~

(5) ~~Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and~~

(6) ~~Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.~~

~~The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.~~

f. ~~If this Agreement is terminated under this Section 1003, the status of the parties with respect to environmental conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.~~

g. ~~A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.~~

~~Section 1004. Effects of Suspension and Termination~~

a. ~~Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:~~

(1) ~~the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and~~

(2) ~~the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.~~

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

b. ~~The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."~~

~~Article XI~~ ~~LEGAL AUTHORITY~~

~~Section 1101. Legal Authority~~

~~The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.~~

~~IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.~~

~~SAN FRANCISCO REDEVELOPMENT AGENCY~~

By: _____

NAME:

TITLE: _____ Director

Dated: _____

~~THE UNITED STATES OF AMERICA~~

By: _____

Mr. Robert Griffin

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Dated: _____

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

APPENDIX 13

~~Agreement to Implement the Conveyance Agreement
between the United States of America and the San Francisco Redevelopment Agency
for the Conveyance of Hunters Point Naval Shipyard
with Regard to IR Sites 7/18 and the Radiologically Impacted Area around Building 140
dated _____~~

~~[Separate agreement to implement plan for IR Sites 7/18 and the
Radiologically Impacted Area around Building 140 that utilizes escrow agent
and mimics former ETCA section 717]~~

Document comparison done by DeltaView on Friday, January 29, 2010 2:54:55 PM

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Statistics:

	Count
Insertions	68
Deletions	88
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	156

SFRA Draft HPNS ETCA, 29 Jan 2010

EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
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THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA
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**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
A N D
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

1 **THIS EARLY TRANSFER COOPERATIVE AGREEMENT** ("Agreement") is
2 made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval
3 Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT**
4 **AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment
5 authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of
6 Defense and also a local public authority legally empowered to enter into this Agreement.
7 Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party"
8 and collectively as the "Parties."

9
10 **GENERAL PROVISIONS**

11
12 The Federal Government, for and on behalf of the citizens of the United States of
13 America, acts as the steward of certain real property on which it operates and maintains
14 military facilities necessary for the defense of the United States of America. Certain military
15 facilities are no longer required for that mission, and, in accordance with various base closure
16 statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real
17 and personal property at those facilities. The Navy is authorized to dispose of real and personal
18 property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local
19 reuse organization approved by the City, in accordance with Section 2824 (a) of the National
20 Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section
21 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-
22 160). The SFRA is a local reuse organization approved by the City of San Francisco to accept
23 conveyance of HPNS property in accordance with the authorities set out above.

24
25 The Parties did execute and enter into that certain *Conveyance Agreement Between the*
26 *United States of America, Acting by and through the Secretary of the Navy, and the San*
27 *Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated
28 March 31, 2004 ("Conveyance Agreement").

29
30 Under the Comprehensive Environmental Response, Compensation and Liability Act
31 ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 completion of all remedial action necessary to protect human health and the environment. Under
2 this early transfer authority, the Navy intends to convey title to, among other property, the
3 portion of HPNS property known as the Area Covered by Environmental Services (hereinafter
4 "ACES"), to the SFRA. The ACES is defined in Section 222 below and shown in
5 Appendix 2. The SFRA assumes responsibility for certain environmental response
6 activities (hereinafter the "Environmental Services," as defined in Section 211 below) for
7 the consideration set forth in this Agreement. The principal purpose of this Agreement is to
8 facilitate early transfer and redevelopment by providing the contractual vehicle under which the
9 SFRA will perform the Environmental Services in the ACES and be compensated for such
10 performance.

11
12 It is in the public interest and will be beneficial to the Navy and the SFRA for the SFRA
13 to cause to be performed the Environmental Services at the ACES. As set forth in the
14 Amended Federal Facilities Agreement ("Amended FFA"), as defined in Section 231 below,
15 the Navy will resume CERCLA responsibility for compliance with the Amended FFA in the
16 event of a Finding of Default as provided in the Administrative Order on Consent ("AOC") as
17 hereinafter defined, or upon a failure of the Navy to continue its funding obligations, as
18 described in Article IV, or upon a termination of this Agreement pursuant to Sections 701
19 and 1003 below. Notwithstanding any other provisions of this Agreement, the Navy is not a
20 party to, bound by, or responsible for compliance with any of the provisions of the AOC. The
21 Navy's obligations pursuant to the Amended FFA are not affected by this Agreement with
22 respect to Navy Retained Conditions, as defined in Section 206.

23
24 This Agreement benefits the Navy and the SFRA because it facilitates early transfer and
25 immediate reuse by allowing the SFRA to cause to be performed certain environmental
26 remediation activities and simultaneously facilitates redevelopment as defined herein. This
27 Agreement, executed as part of an early transfer, facilitates SFRA access and control to the
28 ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section
29 220 below). In addition, early transfer will allow the Navy to convey title in compliance with
30 CERCLA requirements at an earlier date than could otherwise be achieved. This Agreement is
31 a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section
32 2701(d)(1).

33
34 In accordance with 42 U.S.C. 9620 (h)(3)(C)(iii), after all remedial action necessary to
35 protect human health and the environment with respect to any hazardous substances remaining
36 on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an
37 appropriate document containing the CERCLA warranty that all response action necessary to
38 protect human health and the environment has been taken .

39
40 The Navy and the SFRA have entered into this Agreement for the purpose of
41 establishing the terms and conditions necessary to obtain Regulatory Closure for the ACES and
42 ensure the execution of Long-Term Obligations associated with Regulatory Closure. The Navy
43 agrees to provide funds to the SFRA in accordance with and subject to the provisions of this

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Agreement and to undertake and complete its obligations under Section 302 hereof. The SFRA agrees to perform the Environmental Services in accordance with and subject to the provisions of this Agreement.

Article I SCOPE AND PURPOSE

Section 101. Performance of Environmental Services

The SFRA shall cause to be performed the Environmental Services in accordance with and subject to the provisions of this Agreement subject to the receipt of funding from the Navy in the amount of _____. The Environmental Services, to the extent required to be performed under this Agreement, with regard to the ACES, shall achieve Regulatory Closure and comply with Long Term Obligations for Known Conditions and Insured Unknown Conditions throughout the ACES as provided herein shall satisfy the requirements of CERCLA including but not limited to as provided for in the CERCLA Record of Decisions ("ROD") (as defined in Section 207) (including Explanation(s) of Significant Differences and ROD amendments), the National Contingency Plan ("NCP"), and the AOC (as hereinafter defined), *but excluding those RODS, ESDs and amendments which, pursuant to section 206, are determined to be Navy Retained obligations.* The SFRA shall not be responsible for any Navy-Retained Conditions subject to the provisions of this Agreement. [Note: this assumes that all PCAP work will be completed prior to transfer]

Section 102. Performance Method

The CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), and AOC together establish the process for the SFRA obtaining Regulatory Closure within the ACES. By the execution of this Agreement, the Navy concurs with the Regulatory Closure process set forth in this Agreement and the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), and all documents and approvals referenced therein with respect to performance of Environmental Services.

Article II DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The Navy's representative for execution purposes is Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

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Section 203. SFRA

The term "SFRA" means the San Francisco Redevelopment Agency, a Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent ("AOC").

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, [Lennar entity] and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The following "Navy-Retained Conditions" are not within the scope of the Environmental Services covered by this Agreement and the SFRA is not responsible for conducting, investigating or remediating them under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; (iii) any other activity identified as the responsibility of the Navy in the Amended FFA, and (iv) any change to requirements associated with Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials in the CERCLA RODs set forth in an Explanation of Significant Differences under CERCLA or a ROD amendment; (v) *unknown uninsured conditions*. Navy-Retained Conditions do not include Ineligible Work as defined in Section 218 below. *Environmental Services do not include costs or work required by Regulatory Agencies due to any change to a CERCLA ROD or set forth in an Explanation of Significant Differences under CERCLA or a ROD Amendment except:*

a. to the extent covered by insurance, or

b. not attributable to the negligence or misconduct of SFRA

In the event of such change, the Parties agree to meet, determine whether the costs or work are Navy Retained pursuant to the criteria above and if they are, to identify the Navy's funding source and schedule and to consider the addition of and payment for such work to the ETCA or

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1 *to arrange for some other contractual relationship.*

2 *In the performance of Navy Retained conditions, the Navy agrees to minimize the interference*
3 *with SFRA's performance of Environmental Services and development work to the extent*
4 *practicable and consistent with the protection of human health and the environment.*

6 **Section 207.** CERCLA RODs

7
8 The term "CERCLA RODs" means the CERCLA Record of Decision for Parcel B
9 dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18,
10 2009, [EPA and Navy are to resolve "who is United States."] amendments thereto, and
11 explanation of significant differences thereto.

13 **Section 208.** Regulatory Closure

14
15 The Term "Regulatory Closure" means approval or certification of completion of any
16 necessary remedial or corrective action required to address Known Conditions and Insured
17 Unknown Conditions throughout the ACES including but not limited to that required by the
18 CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments),
19 and the AOC, or the issuance of a "No Further Action" letter or equivalent finding by the
20 appropriate Environmental Regulatory Agency or Agencies pursuant to the statutes and
21 regulations administered by those Agencies with respect to the ACES and undertaken
22 by the SFRA pursuant to this Agreement. The term "Regulatory Closure" shall include without
23 limitation Certifications of Completion issued by EPA as set forth in Article XVII of the AOC.

25 **Section 209.** Navy and Government

26
27 The terms "Navy" and "Government" are used interchangeably herein.

29 **Section 210.** Long-Term Obligations

30
31 The term "Long-Term Obligations" means any long-term review, monitoring, reporting
32 and institutional control ("IC") and operation and maintenance requirements that are required in
33 support of and after Regulatory Closure to address any necessary remedial or corrective action
34 required to address Known Conditions and Insured Unknown Conditions throughout the ACES
35 including but not limited to that associated with or in furtherance of the CERCLA RODs
36 (including Explanation(s) of Significant Differences and ROD amendments), and AOC,
37 including providing existing records and reports for the Navy's preparation of the CERCLA
38 five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year
39 reviews thereafter.

41 **Section 211.** Environmental Services

42
43 The term "Environmental Services" means activities funded by this agreement solely

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with respect and limited to the Insured Scope of Work and Insured Conditions necessary to obtain Regulatory Closure throughout the ACES, and associated Long-Term Obligations upon which such Regulatory Closure is conditioned- *except to the extent that such Longterm Obligations are attributable to Navy Retained Obligations*. Environmental Services does not include the performance of Navy-Retained Conditions as defined in Section 206 or Ineligible Work as defined in Section 218 below .

Section 212. Insured Scope of Work

The term “Insured Scope of Work” means work necessary to address environmental conditions that is within the coverage grant of the cost overrun insurance component of the Environmental Insurance Policies, and includes such work even after the expiration of the term of, or exhaustion of the limits of, the cost overrun insurance component of the Environmental Insurance Policies, except to the extent such Work is a Navy-Retained Condition.

Section 213. Insured Conditions

The term "Insured Conditions" means those environmental conditions in the ACES that are not within the insured scope of work but are otherwise within the coverage grant of the Environmental Insurance Policies. This term also includes any environmental condition that otherwise would have been an Insured Condition but for which coverage was denied by the insurance provider solely due to the failure of the SFRA or named insured to comply with any requirements as set forth in the Environmental Insurance Policies (“Excluded Insured Condition”). The term “Insured Conditions” shall include Excluded Insured Conditions only to the extent of specific costs that would have otherwise been funded by the Environmental Insurance Policies but for such failure of the SFRA or the named insured.

Section 214. Uninsured Condition(s).

The term “Uninsured Condition(s)” means those environmental conditions that are not “Insured Conditions”.

Section 215. Radiological Materials [Need to discuss further]

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, tungsten welding electrodes and household smoke detector components- *except to the extent that such products were used for*

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1 *military repair or maintenance activities or are located within the ACEs as a result of Operation*
2 *Crossroads. [Need to discuss procedures in event Radiological Materials are encountered*
3 *unexpectedly.]*
4

5 **Section 216.** Environmental Insurance Policies

6
7 The term "Environmental Insurance Policies" means the environmental insurance
8 policy(ies) issued and approved pursuant to Section XXXXX and meeting the requirements of
9 Section XXXXX below and attached as Appendix 4.
10

11 **Section 217.** Reserved

12 **Section 218.** Ineligible Work

13
14
15 The term "Ineligible Work" means the performance of any or more of the following
16 work:
17

18 a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials
19 ("ACM") incorporated into building materials in their original location and not previously
20 demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering
21 LBP from structures.
22

23 b. Cleanup of pesticides and herbicides applied in accordance with the
24 requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its
25 predecessors including, but not limited to, chlordane properly applied as a termiticide to
26 presently existing wooden structures, their foundations, and underlying soils. *[note EPA*
27 *comment on draft FOSL: consumer product exemption does not apply. Further, 40 CFR 302.4*
28 *specifically lists chlordane and other termiticides as a CERCLA hazardous substance,*
29 *pursuant to 42 USC 9602. What is the basis for excluding remedial work for a specifically*
30 *designated hazardous substance? Further, if soils containing pesticides were moved by the*
31 *Navy from the location where the pesticides were applied, what is the basis for rendering the*
32 *cost for cleanup of such soil ineligible? What is basis upon which proper application is to be*
33 *determined?]*
34

35 c. Management and off-site disposal of contaminated soil or solid waste excavated
36 or generated during the course of Redevelopment Activity within any portion of the ACES for
37 which all appropriate Environmental Regulatory Agencies have previously approved
38 Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA,
39 or (2) issuance of an approved Remedial Action Completion Report ("RACR") following
40 installation of a cap/cover remedial action by the Navy.
41

42 d. Additional remediation necessary to implement a change in land use from the
43 land uses set forth in the Reuse Plan.

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e. Management and disposal of construction and demolition debris generated in the course of Redevelopment Activity.

f. Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except the following shall not be Ineligible Costs removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment vessels within or beneath structures to the extent the equipment and vessels were not reasonably discovered by visual inspection during a walk-through in which both parties participated.

g. Any reconstruction, alteration, or replacement of any initial cap/cover containment remedial action constructed pursuant to a ROD (including but not limited to reconstructed, altered, or replaced cap/covers incorporating soil vapor barriers for enclosed structures), but only to the extent that such reconstruction, alteration or replacement is the result of (i) SFRA's failure to implement and/or enforce required institutional controls, or (ii) Redevelopment Activity.

h. Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

i. Any other work or activity that is not related to: (1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing associated "Long-term Obligations."

j. Regulatory Enforcement Activities unrelated to regulatory oversight.

k. Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.

1. Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

SFRA shall have no obligation to address activities defined as Ineligible Work, except to the extent work is funded by the Navy or the Environmental Insurance

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Policies.

m. Except to the extent any portion of Ineligible Work is a Navy-Retained Condition, the Navy shall have no responsibility for Ineligible Work, and no funds provided under Section 302(a) may be used by the SFRA to fund Ineligible Work; provided, however, that nothing in this Agreement shall prohibit the SFRA, within its sole discretion, from performing Ineligible Work at the SFRA's own cost and expense. NOTE TO NAVY: This should be moved out of definitions to an operative section.

Section 219. Redevelopment Activity

The term Redevelopment Activity means activities undertaken which are not pursuant to a CERCLA ROD remedy.

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2. , and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and

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incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Navy Obligations

The term "Navy Obligations" means the obligations of the Navy as set forth in Section 302 hereof.

Section 226. Regulatory Oversight *[EPA and Navy were to address and discuss]*

a. The term "Regulatory Oversight" includes the following services provided by any Environmental Regulatory Agency which are considered allowable costs under this Agreement. Technical review of documents or data;

b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);

c. Site visits other than enforcement inspections;

d. Technical Review Committee (TRC) or appropriate community outreach program if applicable;

e. Administration of the Cooperative Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;

f. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;

g. Independent quality assurance/quality control samples.

Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities"

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includes:

a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or

b. Activities associated with USEPA, DTSC, the Water Board, CDPH, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

Section 228. Grants Officer

The Navy's Grants Officer is the Director of Acquisition, NAVFACENGCOM, and is the only authorized Government official who can make changes and obligate funds under this Agreement.

Section 229. Environmental Regulatory Agency or Agencies

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), the San Francisco Bay Water Quality Control Board ("Water Board"), and the California Department of Public Health ("CDPH"), or other independent state or federal agency with jurisdiction over the Environmental Services.

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES. These environmental covenants and restrictions are necessary for the protection of human health and the environment and the implementation of final remedies for the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and the Water Board dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

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Section 232. Petroleum Corrective Action Plans *[Delete this section if all PCAP work is completed prior to transfer]*

The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs.

A r t i c l e I I I **OBLIGATIONS OF THE PARTIES**

Section 301. Obligations of the SFRA

a. In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA assumes responsibility for performing the Environmental Services. Subject to the provisions of Sections 302 hereof, the SFRA agrees that it shall cause to be performed the necessary Environmental Services unless the costs associated therewith exceed the funds provided by the Navy and the environmental insurance policies hereunder. In the event that an Environmental Regulatory Agency requires changes to the Environmental Services necessary to satisfy the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments), and AOC, the SFRA shall conduct and bear the cost of such services- *except to the extent that the costs and work associated with such change are Navy Retained Conditions as defined in section 206*. If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout the ACES before transferring its final property interest within the ACES to a third party or _____ years after the execution of this Agreement by both parties, whichever shall occur first

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.B hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

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1 c. The SFRA shall conduct audits and shall provide performance and financial
2 reports to the Navy in accordance with Section 301.e. below.

3
4 d. The SFRA shall cause the performance of the Environmental Services in a
5 manner that will not unreasonably delay any action that the Navy determines that it may
6 undertake in order to address Navy-Retained Conditions.

7
8 e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711.0
9 hereof.

10
11 f. Non-Federal Audits, Performance Reporting & Financial Reports.

12
13 (1) The SFRA is responsible for obtaining annual audits in accordance with
14 the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-
15 133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be
16 made by an independent auditor in accordance with generally accepted government auditing
17 standards covering financial audits. The costs of audits made in accordance with this section
18 are allowable costs under this Agreement.

19
20 (2) The SFRA is responsible for assuring compliance with applicable
21 Federal requirements and that performance goals are being achieved. In accordance with 32
22 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be
23 submitted to the Navy on the same basis as the SFRA, its developer, or its contractors submit
24 such information to the insurance provider.

25
26 (3) In accordance with 32 CFR 33.41, the SFRA shall submit timely
27 financial status reports to the Navy. All reports shall be submitted to the Navy on the same basis
28 as the SFRA, its developer, or its contractors submit such information to the insurance provider.

29
30 f. The SFRA shall provide the Navy notice within thirty (30) calendar days of
31 receiving notice by Environmental Regulatory Agencies, or other third parties, of the existence
32 of any condition at the ACES that suggests that an action is necessary for which the SFRA is
33 not responsible under this Agreement. If the SFRA is served with a complaint or written notice
34 by an Environmental Regulatory Agency, the SFRA shall provide the Navy with a copy of such
35 document no later than seven (7) calendar days following the service of such document.

36
37 g. Within thirty (30) calendar days of receiving actual notice of any condition at or
38 affecting the ACES or that the SFRA discovers, for which the SFRA is not responsible under
39 Section 302 hereof, the SFRA shall notify the Navy of such condition. The exception to this
40 duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare
41 agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such
42 discovery. The Parties shall, within thirty (30) calendar days after such notification, and
43 five (5) calendar days in the case of notification of UKO biological warfare agents, or

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radiological or chemical warfare agents meet and confer regarding any appropriate coordination that might be required in order to address the circumstances.

h. Notwithstanding the provisions of the preceding Section 301.e. hereof, but subject to the Navy's funding limitation as set forth in Section 401 hereof, the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to Navy-Retained Conditions:

(1) Investigation Activities. Any activity necessary to determine the existence, nature, character and extent of conditions that may constitute Navy-Retained Conditions.

(2) The SFRA shall notify the Navy within fifteen (15) business days after the SFRA takes or causes to be taken any action under Section 301.h.(1) hereof. If the Navy disputes an SFRA action taken under Section 301.h(1), the Navy may initiate dispute resolution procedures under Section 1001 hereof.

i. If the SFRA discovers a condition in the ACES that the SFRA reasonably believes is a Navy-Retained Condition, the SFRA shall make an initial determination whether such condition is in fact a Navy-Retained Condition before incurring such costs or obligations. If, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a Navy-Retained Condition, the SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401, hereof, and the dispute resolution provisions of Section 1001 hereof. Nothing in this Agreement shall be construed as a Navy promise or obligation to provide such reimbursement, provided however that, subject to its funding limitations and the Anti-Deficiency Act, the Navy shall use its best efforts to obtain funds to reimburse SFRA for its reasonable costs incurred under this Section 301 (g).

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any Navy-Retained Conditions that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections to ensure compliance with the Long Term Obligations by future transferees of the ACES and prepare compliance monitoring reports and certificates as required under the LUC RD and CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments) and the AOC. The SFRA shall notify and obtain approval from the Navy, which approval shall not be unreasonably withheld, of any change in land use that is inconsistent with the use restrictions and assumptions contained in the CRUP or described in the CERCLA RODs (including Explanation(s) of Significant Differences and ROD amendments)-, *which approval shall be based upon a*

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determination that such change in use does not represent significant increase in risk to human health and the environment. After receiving approval, for such use from the other signatories to the Amended FFA the SFRA shall notify and obtain approval from the Navy.

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

c. Within thirty (30) calendar days after the SFRA has provided the Navy with:

(1) proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and

(2) a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. Within a fifteen (15) after receiving any notice from the SFRA under Section 301.f. or 301.g. hereof, the Navy shall confer with the SFRA with regard to any Navy-Retained Condition at issue giving priority to notices concerning the presence of UXO, biological warfare agents, chemical warfare agents or Radiological Materials. The Navy and the SFRA, in consultation with the appropriate Environmental Regulatory Agency or Agencies, shall (i) endeavor to agree upon a course of action. If the Parties cannot agree whether an environmental condition constitutes a Navy-Retained Condition, or disagree about the action required in response to any such condition under CERCLA, the matter may be submitted to dispute resolution under Section 1001. Consistent with the provisions of above Section 301.h., including being subject to the Maximum Navy Funding Obligation as set forth in Section 401 hereof and the Dispute Resolution Provisions under Section 1001, the SFRA may take any actions deemed necessary, and seek reimbursement from the Navy for the costs associated with such actions.

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e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

f. The Navy shall cause its performance of any activity with respect to Navy Retained Conditions in a manner that will not delay the SFRA's performance of Environmental Services or development of the Aces.

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation, provided that the Navy use its best effort to obtain funds to reimburse SFRA pursuant to Section 301 (i).

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

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Article V PAYMENT SCHEDULE

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Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

(1) The SFRA shall maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

(2) Within a reasonable period of time after receiving the advance payment from the escrow account, the SFRA shall deposit the funds with an independent third party payee such as an insurer. Such independent third party payee shall be responsible for making all payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to perform the Environmental Services or to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

(A). The SFRA does not retain possession of the funds;

(B). The SFRA cannot get the funds back upon demand (this does not include allowable costs incurred by the SFRA for which the SFRA requests proper reimbursement from the independent third party payee);

(C). The independent third party payee is an independent stakeholder from the SFRA and the party or parties with whom the SFRA enters into an agreement to perform the Environmental Services or supervise the performance of the Environmental Services and not the agent of the SFRA;

(D). The SFRA receives something in exchange for the transfer of funds to the independent third party payee, such as a contractual promise to hold the funds and make payments in accordance with specified procedures.

(3) Any agreement by the SFRA with an independent third party payee must also

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

2
3 (4) Interest. Any interest earned on the advance payment while in
4 the escrow account pending transfer to the SFRA and any interest earned on the
5 advance payment by the SFRA prior to the disbursement of those funds by the SFRA to
6 the independent third party payee must be returned to the Navy in accordance with 32 CFR
7 §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the
8 SFRA to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are
9 considered funds to be utilized for the purposes of this Agreement.

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Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. Only the following two terms of this Agreement shall survive such termination, and then only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above or other Navy default:

a. SFRA requirements to maintain compliance with Regulatory Closure and any applicable Long-Term Obligations including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;

b. the SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and; (iii) Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

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Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

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Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (1)(a) shall in no event apply to Navy-Retained Conditions or Uninsured Unknown Conditions:

(A) any claims incurred in responding to environmental conditions in the ACES and within the scope of Environmental Services; or address otherwise any "Ineligible Work" as set forth in Section 218 performed by or on behalf of the SFRA;

(B) oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

(D) all natural resource damage claims pursuant to 42 U.S.C. Section

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1 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such
2 damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its
3 contractors or its successors in interest;

4
5 (E) all costs arising from the negligent performance of the
6 Environmental Services which SFRA performs or causes to be performed;

7
8 (F) all costs of additional remediation required on or within the
9 ACES as a result of a change in land use from that upon which the initial remedial action
10 selection decision was based when Regulatory Closure was completed;

11
12 (G) all costs associated with the correction of any failure of any Navy-
13 selected remedy implemented by the SFRA, but only to the extent such costs are directly
14 attributable to the poor workmanship or negligence of the SFRA or its contractors in the
15 performance of said implementation;

16
17 (H) all costs arising from the correction of any failure of any remedy
18 both selected and implemented by the SFRA; and

19
20 (I) all costs arising from or associated with claims addressed in the
21 Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

22
23 (2) With regard to the ACES, the Parties agree that the SFRA has provided
24 financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C.
25 Section 9620(h)(3)(C)(ii).

26
27 (3) Except as otherwise expressly provided by this Agreement, this
28 Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA
29 may have, in the absence of this Agreement, to take legal action to require the Navy to act with
30 respect to Navy-Retained Conditions, or to seek damages resulting from the Navy's
31 performance or failure to perform any actions with respect to Navy-Retained Conditions.
32 Except as otherwise expressly provided by this Agreement, this Agreement shall also not be
33 construed to limit, expand or otherwise affect any right that the Navy may have, in the absence
34 of this Agreement, to take legal action against the SFRA.

35
36 (4) Nothing in this Section creates rights of any kind in any person or entity
37 other than the Navy and the SFRA.

38
39 (5) The SFRA and the Navy agree that the Environmental Services to be
40 caused to be performed by the SFRA in accordance with the terms of this Agreement does not
41 include any work relating to, nor is the SFRA responsible for indemnification of the Navy for
42 any work related to, Navy-Retained Conditions.

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(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past *[are there any past issues known at this time?]*, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of Known Conditions; Insured Unknown Conditions;

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to Navy-Retained Conditions; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD, whether or not such activity is addressed in subsequent CERCLA RODs or CAPs, a CERCLA ROD Amendment, an Explanation of Significant Differences ("ESD"), or through a review and approval process by the United States of America and/or State of California pursuant to a Risk Management Plan or CERCLA IC review and approval procedure. *In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid.*

(D) Any personal injury or property damage to the extent that it did not accrue prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA agrees to bind subsequent to the execution of this Agreement, and with an effective date of conveyance, Environmental Insurance Policies with reasonably acceptable terms, conditions and coverages to the Navy which shall include both a Cleanup Cost Cap Policy ("Cost Cap Policy") for cost overruns associated with the performance of the Environmental Services and a Pollution Legal Liability Insurance Policy ("PLL Policy"), or similar coverage or coverages, and issued by an insurance carrier that is rated A.M. Best's or better, substantially similar to the Environmental Insurance Policies shown in Appendix 4. Such Policy or Policies will provide that the insurer waive its right of subrogation against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign

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to any third party any rights of action that the SFRA may have against the Navy under this Agreement, subject to the provisions of Section 711.above. The Navy shall be listed as an Additional Insured with respect to the coverage provided in any Environmental Insurance Policy or Policies. The Navy shall not otherwise be deemed an insured of, nor have any rights with respect to, any other grant of coverage under the Environmental Insurance Policies. [Availability of such Policy or Policies?]

c. RESERVED for additional specific environmental insurance language to be developed.

d. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

e. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

f. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within

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ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to Navy-Retained Conditions, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

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Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

Article IX PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent

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1 practicable, residents of the vicinity of such military installation to perform such contracts.
2 Contracts for which the preference may be given include contracts to carry out environmental
3 restoration activities or construction work at such military installations. Any such
4 preference may be given for a contract only if the services to be performed under the
5 contract at the military installation concerned can be carried out in a manner that is consistent
6 with all other actions at the installation that the Secretary is legally required to undertake.

7
8 b. Definition. In this section, the term "base closure law" means the following:

9
10 (1) The provisions of title II of the Defense Authorization Amendments and
11 Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

12
13 (2) The Defense Base Closure and Realignment Act of 1990, as amended
14 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

15
16 c. Applicability - Any preference given under subsection (a) shall apply only to
17 contracts entered into after the base closure law was enacted.
18
19

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Article X TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either

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party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement, shall include:

a. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;

b. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.

c. Withholding further awards under this Agreement; and

d. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.

e. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:

(1) Stop work;

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

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(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to environmental conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25,

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including the restrictions on entering into a covered transaction with any party which is
debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal
assistance programs under Executive Order 12549, "Debarment and Suspension."

**Article XI
LEGAL AUTHORITY**

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably
foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and
conditions of this Agreement. The parties will promptly notify each other of any legal
impediment that arises during the term of this Agreement that may prevent or hinder the party's
abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to
this Agreement, by their authorized representatives, hereby cause this Agreement to be
executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____

NAME:

TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____

Mr. Robert Griffin

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Dated: _____